CASE and COMMENT

FALL ★ WINTER
1944-1945
VOL. 49 :-: NO. 4

In This Issue

American Lawyers

HON. WM. C. LUCAS
(Condensed from Missouri Bar Journal)

THERE are said to be 175,000 lawyers in our United States, of almost every race, color and creed, from occident and orient, and ranging in training and intellectual attainments from the aborigine to the intelligentsia of the nth degree, all engaged in the lawyer's business, the administration of justice.

Before our National Government was, Edmund Burke, in his famous Conciliation of the Colonies speech in the English House of Commons, said: "In no country in the world is the law so general a study as in America. As many copies of Blackstone's Commentaries are sold in America as in England. The profession is numerous and powerful and in most provinces it takes the lead."

This being a Government of laws and not of men,—from colonial days to this hour, the one clear call heard and sounded by American lawyers has been—respect for duly constituted authority but resistance to its abuse.

The greater number of Deputies sent to the Continental Congress were lawyers, and there were twenty-six lawyers of the fifty-six representatives who signed the Declaration of Independence. Thirty-one of the fifty-five members of the Convention that gave us the Constitution, were trained, educated, outstanding lawyers.

For the first century of our National life, lawyers were the leaders in public life and it is frequently said that for a hundred years we had a Government by lawyers. At least twenty-three Presidents have been lawyers, and in the Legislative Departments, State and National, they have outnumbered any other profession or class. The Judiciary, of course, has drawn to the bench lawyers of capacity and ability.

It is difficult in our popular thinking to disassociate our consideration of lawyers as members of the profession from them as students and masters of the science of Government, and the best remembered by the public may be so remembered as orators and statesmen, and only incidentally as members of the great profession. You ask me who is, or to name the one who has been, America's greatest lawyer? I answer, his name is *Legion*. In every generation, in every need, American lawyers have been renowned. They have been educators in the law, practitioners at the Bar, Judges on the Bench, soldiers in the field, and statesmen in the Halls of Government.

George Wythe of Virginia, a recognized leader of the Colonial Bar, a professor of law in William and Mary College, had no superior in his day and yet how few persons think of Wythe as being a greater lawyer than Patrick Henry.

John Adams, doing a lawyer's duty, was unafraid to defend in the courts the British Red Coat Captain and his troops charged with murder in the Boston Massacre.

John Marshall, advocate of poor and rich alike, destined while he was declining many honors in the gift of two Presidents, to become the great Chief Justice and holding that office and being Secretary of State both at the same time for a short period, has never had a superior as a practicing attorney.

(This address was delivered as one of the series of radio addresses of the Missouri Bar Association by Hon. Wm. C. Lucas, of the Kansas City Bar Association).

Luther Martin of Maryland, little known to even our students of history, did not need the glamour of public position to justify his employment as Chief Counsel for Mr. Justice Chase of the United States Supreme Court, in impeachment proceedings, and for Aaron Burr tried for treason, so eminent was he in his profession.

Rufus Choate said of Daniel Webster: "There presents itself to any observation of Webster's life and character a two-fold eminence—eminence of the highest rank in a two-fold field of intellectual and public display, the profession of law and the profession of statesmanship, of which it would not be easy to recall any parallel in the biography of illustrious men. He was, by universal designation, the leader of the general American Bar."

And if names make news, I give you Webster and Hayne, Clay and Calhoun, Lincoln and Douglass until the war between the States sent to tented fields the flower of the American Bar from North and South.

In and following reconstruction days came Conkling and Blaine and the golden tongued Garfield, brave soldier and martyred President.

In our present day none could surpass Elihu Root or the present Chief Justice, and a place for Newton D. Baker at the head of the American Bar, was safe and secure on the day he died.

And now may I close—quoting the words of a philosopher who said: "I cannot believe that the American Republic could endure if the influence of lawyers in public business did not increase in proportion to the power of the people. When the people is intoxicated by passion, or carried away by the impetuosity of its ideas, it is checked and stopped by the almost invisible influence of its legal counsellors."

Joseph and His Brethren

BY HARRY COHEN
(New York City Bar)

HAVING been appointed, quite unexpectedly, a minor bureaucrat in the service of our national program of economic stabilization, I have given some thought of late to the story of the earliest of my predecessors as recorded in Scripture. You will recall that it was Joseph who became, after many personal vicissitudes which provided splendid training, Rationing Administrator for Egypt (Region I: Valley of the Nile), in a time of dire emergency.

I must confess that the similarity between the ancient prototype and his modern counterparts does not seem very striking. For one thing, Joseph seems to have gained a certain measure of popularity in the conscientious discharge of his duties, not only at home, but even abroad, in distant Canaan. For another, his tenure of office seems to have been rather more permanent than in the case of some of the more recent of his brethren.

But I notice an even more fundamental point of departure. Despite the protests of those who claim the contrary, the area of discretion which is left to the modern bureaucrat is really a narrow one, hemmed in as it is by a body of regulations and official interpretations which provide scant

latitude for whim or caprice. I find no such limitations to restrict our Biblical ancestor. In Genesis 41, I read, "And when all the land of Egypt was famished, the people cried to Pharoah for bread, and Pharoah said unto all the Egyptians, Go to Joseph, what he saith to you, do."

Obviously, the extent of power conferred upon Joseph by this injunction shows the degree of confidence in which he was held. Of course, it was thoroughly justified, for Joseph was a model of self-restraint, as Pharoah may have learned from Potiphar's wife in a moment of intimate and personal self-revelation.

As I have indicated, Joseph's task was comparatively simple, for he seems to have devoted himself solely to the problems of rationing, leaving the whole field of price control severely alone. There was certainly some justification for this since it must be admitted that Egypt is a very poor place to attempt to freeze anything, including prices, I suppose.

However, this has proved unfortunate for me, for my researches have not yielded me very much of value in the solution of my own problems, which are concerned with the emergency in housing. Yet I cannot understand Joseph's complete indifference to this important matter. "To your tents, O Israel," is hardly a rousing battle-cry, when there are no tents to be had. And from tents to rents seems a transition so natural and inevitable that I wonder how it was ever overlooked.

It is a great pity that Joseph was never called upon to devise and administer a system of housing regulation. Certainly, his qualifications were unique, for here was a man who had himself lived in every conceivable kind of habitation from a pit and a dungeon to a palace, a progress which I should not hesitate to call a major capital improvement. It is sad to think that all this wealth of first-hand information was put to no use, apparently. If only I could summon his aid as I sit grappling with the problems presented before the Rent Control Division of the Office of Price Administration.

The Seat of Learning

By ARTHUR CAMPBELL

I BEGAN the practice of law in Olympia, the capital of the State of Washington. That was in 1893. One of my first cases was a divorce which I successfully obtained for a woman client. She was so pleased with my service that she engaged my services for her sister who lived in Walla Walla in the eastern part of the State, and it was necessary for me to go to Walla Walla to try the case. The Judge hearing the case was a rough old pioneer, a lawyer of the very early days of the Territory. Trousers tucked in his high-topped boots, long, drooping mustaches, a tobacco chewer and constantly expectorating but keen and mentally alert if not so profound in the law. The courtroom was well filled, especially the space reserved for the lawyers with cases to try, motions to be heard, etc. My case was called and quite excited I arose and announced—"Ready, your honor." The case was simple enough as most divorce cases are, but to me it was extremely complicated and involved. I made a mess of it, of course and the

Judge, while not denying a decree, postponed the case two weeks. Time for me to amend my pleadings if I so desired. And then the Judge turned on me and said: "Young man, where did you study law?" I could hear the lawyers sitting around the counsel tables titter and nudge each other. Here was fun. I arose and said: "Your honor, I read law in Judge Fitch's office." "Hump" said his Honor: "Judge Fitch?" "He is a good lawyer, an eminent jurist." "Hmmmm," said his Honor, "I wonder" . . . . and there he paused a minute and then said he would examine my amended pleadings, etc., etc. The floor didn't open and let me into the basement, but I wanted it to badly. I knew I had to make good in some way. All the lawyers were laughing and the spectators were amused, so I arose again and said: "Your Honor, may I make a statement?" "If you can," he said with an amused smile. Looking the Judge squarely in the eye, I said: "Your Honor, as I have already stated, I read law in Judge Fitch's office. For over two years I read law nights and to repay the Judge for the use of his law books, his gas, the use of his office and his continued kindness to me and his interest in my studies, I typed his letters and briefs, pleadings, etc. The typewriter was the old fashioned Caligraph with a double keyboard. The Caligraph was kept on a high table and the chairs were all too low to work properly, so, being of an ingenious mind, I bethought me to build up the seat with law volumes from the Judge's shelves. When my work of typing was over, I very methodically replaced the law books on the shelves. Naturally, I did not use the same volumes each night, and therefore, in the course of two years I had absorbed almost the entire library." The Judge was convulsed and so were the lawyers. The Judge tried not to laugh, compromising on an amused smile. Said the Judge: "The seat of man's learning is not always in his head!" "Young man, I'll see you in chambers after court adjourns. Next case please." Later, when court adjourned, the Judge entered his chambers, slammed the door shut, shook my hand and said: "Young man, you'll do." That Judge and I were warm friends for many years and he never tired of telling that story . . . and he used to tell it as on himself.

Amicus Agricolarum

By ALFRED C. BALDWIN, STATE REFEREE
(New Haven, Connecticut)

A STATE Highway Commissioner took an area of land and assessed damages therefor. The land was used by the owner for intensive market gardening and had been for many years, and was in an excellent state of cultivation. The owner, being dissatisfied with the amount of damages assessed, took an appeal.

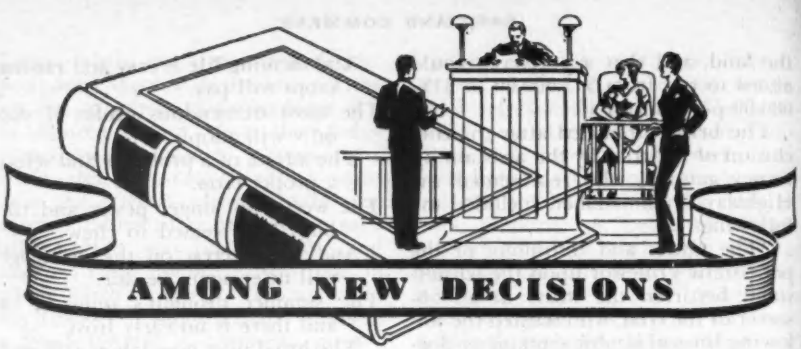
Upon the trial, counsel for the owner of the land called as a witness, a professor of market gardening, who testified to the early spring season and the late fall season the land could be used for gardening, that gardening could be commenced upon this land in March and that three and four crops a season could be marketed from

the land, and that a purchaser could afford to pay from $12,000.00 to $15,000.00 per acre for it.

The brief, submitted after the conclusion of the trial by the assistant attorney general, who represented the Highway Commissioner, included the following:

"The antics and testimony of the peripatetic professor upon the witness stand bestirred the Muse in an observer of the trial, who indited the following lines of iambic septameter doggerel which most eloquently sum up this phase of the testimony:"

"When I was but a little lad I used to have to toil
Along with Pa and Uncle John a-cultivating soil.
We used to work from early morn until the moon was up
And then we'd have to fetch the cows and milk before we'd sup.
And Ma would work the livelong day as hard as she could go
A-tending chicks and churning cream and making clothing so
We kids could have our chance, she said, 'to get about and larn'
There was better ways of living than working on the farm.
I don't believe that mentally I was ever up to snuff,
But even so I figured out that farming life was tough.
It seems to me as I recall the rows were always long,
The sun was hot, the plants were small and the weeds were mighty strong.
The farmer's day was long and hard, his purse was always lean—
His hands were rough, his back was lame, and his breeches seldom clean.
And when he needed store stuff he'd swap for things he'd growed
And had to pay his taxes by working on the road.
A newer generation has changed all this they say,
And farming life is easy and raising crops will pay
The most tremendous profits if you only will adopt
The advice of a professor and select a proper crop.
The weeds no longer pester and the bugs have ceased to chew
And the interest on the mortgage will ne'er again be due.
The summer drought's unheard of and there is no early frost,
The hired man now labors free and tools are never lost.
The land that once was mowing, away down in the rear,
Is now producing cabbages, at least five crops per year.
With carrots, beans and celery a-growing twixt each row,
And the farmer takes it easy and lets the garden grow.
And even if misfortune should rear its ugly head,
There is no need for worry, if all is true that's said—
Just go down to the pasture and stake out a little plot
And sell a wealthy neighbor an expensive building lot.
And who's the one responsible for the way things turned about?
A Professor—up from College is the hero—never doubt.
'Twas he who had the vision and the learning that it takes
To multiply by hundreds the wage a farmer makes.
'Twas he who taught the farmer a dozen tricks or more
That make five heads of lettuce grow where none had grown before.
But you'd think this genius, with his scientific knowledge
Gleaned from years of study at the corn and 'tater college—
Would know that plants need Summer to produce their basic starch
And you just can't grow a garden in the early part of March."



AMONG NEW DECISIONS

Attorneys — *practice of law by insurance adjusters.* In Wilkey v. State, 244 Ala 568, 14 So (2d) 536, 151 ALR 765, it was held that the activities of independent lay insurance adjusters constitute the unlawful practice of law, within a statute including, in its definition of practice of law, the adjustment of claims which are "defaulted, controverted, or disputed," in so far as such activities consist of (1) giving advice as to rights of subrogation and contribution, (2) expressing an opinion as to a claimant's rights under the Workmen's Compensation Act, (3) recommending that the insurer increase its offer of settlement, (4) advising a claimant that he could not legally sue the insurer, and (5) appearing in court to have settlements with minors approved; but not so far as such activities consist of (1) mere investigation of claims, (2) adjustment of a loss where liability is not controverted, (3) settlement of small claims, (4) settlement of claims where, although the claimant had rejected the insurer's original offer, there was no dispute as to liability and negotiations were still open, (5) holding themselves out, and listing themselves in insurance journals, as engaged in the business of independent insurance adjusters, (6) having claimants execute releases on forms furnished by the insurer, and (7) conveying to the claimant the opinion of insurer's counsel as to his rights.

Annotation: What amounts to practice of law. 151 ALR 781.

Automobiles — *adjoining owner's liability for steam obscuring view.* In Lavelle v. Grace, 348 Pa 175, 34 A (2d) 498, 150 ALR 366, it was held that one from whose premises clouds of steam from a vent pipe approximately on a level with an adjacent highway are from time to time blown across the highway is liable for injuries resulting from a collision of automobiles on the highway in consequence of the obscuration of the view of the travelers by a cloud of steam.

Annotation: Emission of smoke or steam from private premises, or existence of other conditions thereon, as ground of liability of owner or occupant for results of an automobile accident in the highway. 150 ALR 371.

Automobiles — *collision with parked car.* In Hardman v. Younkers, 15 Wash (2d) 483, 131 P (2d) 177, 151 ALR 868, it was held that the fact that an automobile properly parked at the curb of a six-lane highway in the afternoon of a clear day when the streets were dry and no unusual traffic conditions were present was struck and damaged by another automobile approaching from the rear, raises an inference of negligence

on the part of the driver of the latter automobile.

Annotation: Res ipsa loquitur as applied to a collision between a moving automobile and a standing automobile or other vehicle. 151 ALR 876.

Bailment — *agreement to return in good condition.* In Loeb v. Ferber, 346 Pa 348, 30 A (2d) 126, 150 ALR 266, it was held that bailee's agreement to return a fur coat in the same condition as when received did not enlarge his common-law liability to that of a virtual insurer rendering him liable for loss occasioned by theft of the coat without his fault, especially where the consideration was obviously intended to cover storage only, and a specific provision originally included in the contract in relation to obtaining insurance was stricken out, the bailor having in fact taken out and collected insurance.

Annotation: Bailee's express agreement to return property, or to return it in a specified condition, as enlarging his common-law liability. 150 ALR 269.

Bailment — *loss of goods by bailee.* In Threlkeld v. Ballard, 296 Ky 344, 177 SW (2d) 157, 151 ALR 708, it was held that the burden of proof resting upon the bailor to show that loss or injury to goods was due to the negligence or other fault of the bailee is sustained where it is shown that the bailor delivered the goods to the bailee in good condition and they were damaged or lost while in the possession of the bailee; and the prima facie case thus made by the bailor is not negatived by the fact that the damage resulted from fire.

Annotation: Presumption and burden of proof where subject of bailment is destroyed or damaged by fire. 151 ALR 716.

Constitutional Law — *integration of bar.* In Integration of Bar Case, 244 Wis 8, 11 NW (2d) 604, 151 ALR 586, it was held that integration of the bar being essentially a judicial function, a statute directing the supreme court to provide for the organization and government of a state bar association, of which practicing lawyers shall be required to be members, is not unconstitutional as delegating legislative power to the court.

Annotation: Integration of bar. 151 ALR 617.

Constitutional Law — *power of governor to change date of election.* In Re Opinion of the Justices, — Mass —, 52 NE (2d) 974, 150 ALR 1482, it was held that a governor is without power to change the date of state primaries in order to make the right of voting more available to citizens in the armed forces, under a general grant of power authorizing him to co-operate with the Federal and state authorities "in matters pertaining to the common defense or to the common welfare" and to carry into effect any request of the President "for action looking to the national defense or to the public safety."

Annotation: Constitutionality, construction, and application of statute conferring emergency powers upon governor during war. 150 ALR 1488.

Criminal Law — *accused's right to be present when jury discharged.* In State v. Ulmo, — Wash (2d) —, 143 P (2d) 862, 150 ALR 759, it was held that the discharge of a jury in a criminal case because of its inability to agree on a verdict is unlawful and amounts to an acquittal of the defendant, precluding his subsequent prosecution for the same offense, where the defendant, being in jail, is not given an opportunity to be present with his counsel when the ques-

LAWYER

t varied case law
oppo of court.

r, Attor**nerican Law Reports** offers an ideal means of primary research.
y, and o**e of the chief values of an A.L.R. annotation springs from the fact that**
s recogni**ule, while it may be verbally perfect, and the ideas which the words con-**
he Supre**y may be familiar and apparently obvious, when viewed from the back-**
o an adv**und may mean something very different. The purpose of every A.L.R.**
ut of co**notation is to show all fact variations in English, Canadian, and Ameri-**
n reflect**a case law. After examining an annotation, the master attorney is in a**
backgro**ition to show his real skill in the difficult field of applications, as the**
veloped **L.R. annotation has shown him all the finest shades of meaning in the**
statem**le field of case law.**

*ys in t*AN LAW REPORTS *can be added to your library.*

Com**-- -- -- Rochester 3, New York**

-- -- San Francisco 2, California

tion of discharging the jury is brought before the court.

Annotation: Personal presence of defendant and his counsel as necessary to the validity of discharge of jury in criminal case before reaching verdict. 150 ALR 764.

Damages — *wife's earning power.* In Rodgers v. Boynton, — Mass —, 52 NE (2d) 576, 151 ALR 475, it was held that loss of earning capacity of a wife is not an item of damages for which her husband is entitled to recover in a separate action for consequential damages; he cannot even recover the value of what he was deprived of by her inability to perform household duties.

Annotation: Damges on account of loss of earnings or impairment of earning capacity due to wife's personal injury as recoverable by her or by her husband. 151 ALR 479.

Divorce — *conclusiveness as to invalidity of divorce in another state.* In Re Holmes, 291 NY 261, 52 NE (2d) 424, 150 ALR 447, it was held that a decree of divorce obtained by a wife from her husband who had previously obtained in another state a divorce from her in her absence does not, although it rests upon an implied finding that the decree obtained in the other state was invalid, estop him to assert its validity in a contest over his right, as the lawful husband of a woman whom he had subsequently married, to be appointed administrator of her estate.

Annotation: Domestic decree of divorce based upon a finding of invalidity of a previous divorce in another state, as estopping party to the domestic suit to assert, in a subsequent litigation, the validity of the divorce decree in the other state. 150 ALR 405.

Easement — *in vacated highway.* In Howell v. King County, 16 Wash (2d) 557, 134 P (2d) 80, 150 ALR 640, it was held that use for more than the requisite statutory period of a platted but unopened street as the only avenue of access to property creates an easement of way therein which survives the extinguishment of the public easement by failure of the public authorities to open the street.

Annotation: Private easement in way vacated, abandoned, or closed by public. 150 ALR 644.

Elections — *refusal to permit negro to vote in primary.* In Smith v. Allwright, 321 US 649, 88 L ed (Adv 701), 64 S Ct 757, 151 ALR 1110, it was held that where the selection of candidates for public office, whose names are to be placed on the official ballot, is entrusted by act of legislature to political parties, a political party, although making its selection at a primary election conducted by party officers at the expense of members of the party, is in so doing an agency of the state, and may not, consistently with the Fifteenth Amendment, exclude negroes from voting in primary elections by adopting a resolution restricting party membership to white citizens. (Overruling Grovey v. Townsend, 295 US 45, 79 L ed 1292, 55 S Ct 622, 97 ALR 680.)

Annotation: Extent of power of political party, committee, or officer to exclude persons from participating in its primaries as voters or candidates. 151 ALR 1121.

Fair Labor Standards Acts — *employee in office building.* In Baum v. A. C. Office Building Co. 157 Kan 558, 143 P (2d) 417, 150 ALR 581, it was held that the janitor or custodian of an ordinary office building, whose duties are those related in the opinion [keeping building clean and properly heated, and running elevator], is not "engaged in commerce" within the meaning of such act [Fair Labor Standards Act].

Annotation: Janitors, elevator operators, watchmen, and other service or maintenance employees, as engaged in "commerce" or in "production of goods for commerce" within Fair Labor Standards Act. 150 ALR 589.

Frauds, Statute of — *brokerage transaction.* In Carter v. McCall, 193 SC 456, 8 SE (2d) 844, 151 ALR 641, it was held that a contract under which one is to have, in consideration of services in negotiating the purchase of a tract of land and in selling it off in lots, a commission on the lot sales and, after the cost of the property and expenses have been realized out of such sales, half the profits and half the value of lots remaining unsold, is not within the provisions of the statute of frauds that no action shall be brought to charge the defendant upon any contract on sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought shall be in writing and signed by the party to be charged.

Annotation: Brokerage or agency contract concerning real property as within statute of frauds. 151 ALR 648.

Group Insurance — *change of beneficiary.* In Johnson v. Johnson, 139 F (2d) 930, 151 ALR 268, it was held that an employer to whom has been issued a group insurance policy on the lives of employees, which provides for change of beneficiaries of individual certificates by notifying the insurer through the employer, such change to take effect when due acknowledgment thereof is furnished by the insurer to the insured employee, cannot be regarded as the agent of the insurer to receive such notice so as to make it effective notwithstanding the death of the insured before the notice reached the insurer.

Annotation: Group insurance: employer as agent of insurer or of employee as regards change of beneficiary. 151 ALR 274.

Judgment — *res judicata in tax matter.* In Henricksen v. Seward, 135 F (2d) 986, 150 ALR 1, it was held that a judgment allowing a claim of refund of Federal excise taxes imposed upon a manufacturer of automobile parts for a certain period, upon the theory that the taxpayer was not a manufacturer or producer within the meaning of the taxing statute, is not res judicata in a later suit to recover a similar refund of taxes for another period, brought after a later decision by an appellate court holding that businesses like that of the taxpayer were within the statute, where, although the mechanical processes and business practices of the taxpayer were substantially identical in the several periods, neither the transactions subjected to the tax nor the periods involved were the same, and the former decision did not set at rest any factual dispute with respect to the nature of the taxpayer's methods.

Annotation: Judgment in tax cases in respect of one period as res judicata in respect of another period. 150 ALR 5.

Parties — *tort action by one having possession only.* In New England Box Co. v. C & R Construction Co., 313 Mass 696, 49 NE (2d) 121, 150 ALR 152, it was held that the possession of lumber by a purchaser of timber from a state commission under a contract calling for the forfeiture of the lumber to the state if it is not removed at a certain date, arising from the failure of the commission to assert the forfeiture and from continued acts of dominion by the purchaser over the lumber after the forfeiture date, is sufficient to sustain a tort action by him against a third

person for the negligent destruction of the lumber by fire.

Annotation: Mere possession in plaintiff as basis of action for wrongfully taking or damaging personal property. 150 ALR 163.

Railroads — *wilful and wanton conduct.* In Brown v. Illinois Terminal Co. 319 Ill 326, 150 NE 242, 151 ALR 1, it was held that the question of a railroad's wilful and wanton conduct at a highway crossing, precluding the defense of contributory negligence, is properly submitted to the jury, where it is shown that the injured person was driving a loaded truck on a highway parallel to and north of the railroad track, so that the engineer on the train must have known that, when he reached the intersection with the highway which crossed the track, he would turn south across the track, the road to the north being closed, that the railroad's employees, having unloaded the material north of the track which the injured person was transporting, must have known of the use of the crossing for this purpose, and that the engineer, although he saw the injured person approaching the highway intersection with his back to the train, neither slackened the speed of the train nor sounded any warning of its approach, although he must have known that the injured person could not pass over the track ahead of the train.

Annotation: What conduct on part of railroad, in connection with crossing accident, amounts to wantonness, wilfulness, or the like, precluding defense of contributory negligence. 151 ALR 9.

Sales — *implied warranty as to secondhand article.* In Moss v. Yount, 296 Ky 415, 177 SW (2d) 372, 151 ALR 441, it was held that an implied warranty may, in a proper situation, arise upon a sale of a secondhand article the same as on new goods, under the provision of the Uniform Sales Act creating an implied warranty "of goods supplied under a contract to sell or a sale" where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment.

Annotation: Implied warranty of quality, condition, or fitness on sale of secondhand article. 151 ALR 446.

Timber — *injury to land in removing.* In Fair Lumber Co. v. Weems, — Miss —, 16 So (2d) 770, 151 ALR 631, it was held that an owner of timber is under a duty to the owner of the land or to the latter's tenant, by virtue of the relationship created by the timber deed, to see to it that, in removing the timber, due and reasonable care is taken not to injure their property unnecessarily.

Annotation: Liability of owner of standing timber or timber rights for damages to the owner of the land in connection with the cutting and removal of the timber by the former or his servant, or by an independent contractor. 151 ALR 636.

Trademarks — *secondary meaning in Trademark Law.* In Cleo Syrup Corp. v. Coca-Cola Co. 139 F (2d) 416, 150 ALR 1056, it was held that the trademark "Coca-Cola" has become so identified with the product of a particular company as to have acquired a secondary meaning, which will be protected in the courts despite any weakness there may be in the name as a technical trademark.

Annotation: Doctrine of secondary meaning in the law of trademarks and of unfair competition. 150 ALR 1067.

THE HUMOROUS SIDE

As Creditors Feel. A letter received some time ago from a doctor, a creditor of a bankrupt, read:

"Thank you very kindly for your Notice of First Meeting of Creditors, in the matter of Mr. ——. In spite of the fact that it was through no fault of mine that Mr. —— was forced to take this means of paying his honest debts, I shall not appear at this meeting to contest his LEGAL rights in this matter."

"This Notice is suitable for framing, and I shall be pleased to hang same near my bedside because it gives me the MORAL right to enjoy a nice yawn, a stretch, and a few more hours of peaceful slumber should Mr. —— ever arouse me again in the wee small hours—unless, of course, I smell the odor of greenbacks instead of liquor."

Contributor: Carlton B. Davis.
Minot, N. D.

V Day. This actually happened in Idaho Falls, Idaho, in 1932: A beautiful woman was on trial for murdering her husband. The jury brought in a verdict of "not guilty." One of her attorneys promptly kissed the defendant. Then his associate kissed her. And then these attorneys each other. Judge C. J. Taylor, who presided at the trial, hastened into his chambers without dismissing the jury. When reminded that he had left the jury sitting in the box he said, "Damn it. That's right. I got a little excited. I was afraid they were going to come up and kiss me."

Exhausted Patience. Some time ago I reported a divorce case in which the main issue was the custody of the year-old child. Relatives on both sides were brought in to testify. One of the boy's aunts was called to the witness stand. The boy's lawyer questioned her and the opposing lawyer asked her a few questions, and she was excused. She walked the full length of the courtroom and sat down. Then the cross examiner thought of some more questions and asked that she be brought back. After a few questions she was excused again. She got about half way back when the boy's lawyer called her back. She was again excused after a question or two and she started back again. Then the Judge took a hand in the questioning, calling her back to the stand. She was excused again. A second time the boy's lawyer called her back. As she climbed up in the witness stand she turned around and exclaimed: "God Almighty, men! Ask me questions while I'm up here! Don't keep havin' me climb up and down all the time. I wish you'd make up your minds!"

Contributor: (Miss) Gene Plasterer
LaGrange, Indiana

None to Speak of. As Public Administrator, says our contributor, I had written for additional information relative to the heirs of a certain estate. Among the answers given by my valued informant was this one:

"The Reverend ———" (an eminent English Clergyman, long since called from his labors in the Lord's vineyard) . . . "was never married and so far as I know, never had any children to speak of."

Contributor: C. Clyde Meyers.
Kansas City, Kans

Character Witness. In the trial of a hotly contested divorce case where the wife charged the husband with extreme cruelty and philandering, the defendant's attorney sought to prove good reputation, and asked the following question of a Minister of the Gospel, whom he had brought in as a character witness:

"As a Minister of the Gospel, have you ever seen the defendant at any time playing around with any woman under any facts or circumstances?"

The answer was, "No!"

Contributor: Judge C. O. Beaver
Sapulpa, Okla

The First Mistake. Recently in the Municipal Court of Tyler, Texas, a lady was hailed before Judge W. R. Castle charged with speeding.

The Court: "Mrs Blank, I see that you are charged with speeding. The officer says you were going sixty miles an hour on Finton Avenue. What about it?"

She replied: "Judge, I really do not know. I might have been making that much time."

The Judge: "I expect you were. The officer is always right in this Court. Fine $10.00."

The Witness: "But, he told me it would only be $5.00."

The Court: "Uh! he made a mistake that time, didn't he?" She paid the $10.00.

Contributor: Alex P. Pope.
Tyler, Tex.

The Cooperative Court. Judge, to the attorney for the defendant: "Counselor, can your client give a good and sufficient bond in the sum of $1500.00, to insure the presence of the defendant?"

Attorney for the defendant: "No, Your Honor, I seriously doubt if the defendant can give a bond in the amount suggested by Your Honor."

Judge: "The bond will be in the sum of $2000.00."

Attorney: "Thank you, Your Honor."

Contributor: W. H. Coutts, Jr.
El Dorado, Kansas.

He Charged the Jury. The late U. S. Senator, A. S. Clay of Georgia, told this one on a newly elected Justice of the Peace at Marietta, Georgia, soon after the Civil War. In due time a case came on to be tried. The lawyers introduced witnesses and brought out the evidence, then made their arguments and took their seats. It was now time for the court to move and he didn't know just what to do. Finally one of the lawyers said to him, "Charge the jury. It is time to charge the jury." Whereupon, the Justice stood up, poked his hands deep into his pockets and addressed the jury as follows: "Gentlemen," said he, "dis is a small case and I will just charge you a dollar a piece."

Contributor: R. E. L. Whitworth.
Dallas, Georgia.

Not Guilty. A few years ago, writes our contributor, I was sitting as committing magistrate on a case in which the defendant was charged with operating a "moonshine" still, which was in evidence in the case, and which had been found near his mountain home in this county. After listening to the evidence presented by the State for the better part of two days, I decided that it had not connected up the defendant with the still sufficiently to warrant binding him over, and dismissed the charge.

After the others had left my courtroom, and the defendant still remained, I asked,

"Mr. M ———, now that I have dismissed you,—is this your still?"

The answer: "Hell, *no*, Judge, *my* still is two miles from there!"

Contributor: Maurice M. McKee.
Rapid City, S. D.

Patriotic Hens. U. S. Senate Committee Witness: "When you establish a price ceiling on eggs, suddenly all the hens in the country start laying grade A eggs."

Contributor: Leslie C. Finley.
Washington, D. C.

It Could Be. The Court: "But what is 'this' exhibit, counsel, that you offer? Describe it for the record; it may be a Saying of Confucius or a page from Shakespeare for aught the Court knows."

Contributor: Leslie C. Finley.
Washington, D. C.

A Crying Plea. We were served, says our contributor with a Notice of Motion by the tenant in a forcible detainer proceeding who desired to appear in court on a motion for more time after the expiration of the time allotted to the tenant by the trial judge. The Notice of Motion contained the following wording:

"Notice of *emotion* for more time."

Contributor: Max Raphael.
Chicago, Ill.

Help! Help! Help! A petition for change of name was filed in the Superior Court of San Francisco, California on May 31st and there appeared in the issue of June 1st of The Recorder, the following:

329033—Petn of Tharnmidsbe L. Praghustspondgifcem for chg of name to Miswaldpornghuestficset Balstemdrigneshofwintpluasjof Wradvaistplondqeskycrufemglish. —Vaughns, Bussey & Berkley.

You readers may be interested in the spelling and pronunciation of both names, the old and the new.

Contributor: Olin L. Berry.
San Francisco, Calif.

Due Credit. Defendant, who having recently been found guilty of murder in the second degree by the verdict of the jury in the Criminal Court of Record in Duval County, Florida, at Jacksonville, Florida, was called before the Court for sentence. After the Court had sentenced such defendant to the State Prison Farm for the term of his natural life, the defendant made the following request to the Court: "Judge, would you please allow me credit for the time I've been in jail waitin' trial?" To which the Judge replied, "I shall be glad to grant your request."

Contributor: Harry H. Martin.
Jacksonville, Fla.

Too Technical. Some time ago in the District Court of Honorable Arthur Cochran at Okemah, Oklahoma, a defendant was charged with burglary for breaking into a hen-house. He had no lawyer and when it came time for him to be arraigned the prosecuting attorney read the information in open Court to the defendant. The information stated "That the defendant did break the padlock upon said chicken house." When this portion was read to the defendant he immediately jumped to his feet with a wide grin across his face in the apparent belief that he had discovered a vital mistake in the case and immediately stated to the judge, "Judge, I didn't do it, I didn't do it, I didn't break the padlock at all, I took the hinges off," he seemed chagrined when he discovered the information was amended to conform with the statement and he is still contemplating the matter in our State Penitentiary.

Contributor: Clem H. Stephenson.
Okemah, Okla.

Limitations! The following letter was recently received by the Juvenile Judge from a private of the United States Army:

June 16/44

"Dear Sir:

"I whood like very mutch to find out about potting in for a low Sut a gents Breach ove Promis I have a letter that whil back me oup but it is a copel ove years olde, An I whood like to now if a letter sent to me, September 8/1943 whood be to hold to yourse for a Law Sute.

"Sinserly yours,
Pvt. ——— — ———
Fort Chaffee, Ark."

Contributor: Earl E. Manges.
Cumberland, Md.

WHAT CAN I DO TO HELP?

By GILL ROBB WILSON[1]

1. Thou shalt keep thy mouth shut.
2. Thou shalt stay out of Washington, both thou and thy conventions and thy car and thy family and thy family's family and all thy correspondence and thy personal problems; none of these shalt thou bring to Washington, for they clutter up the works.
3. Thou shalt not harass thy son because he hath not a commission; neither shalt thou make him to feel the service of an enlisted man to be beneath his college education and thy colonial background; neither shall these things be held against him by other enlisted men if thou dost not make of them an abomination.
4. Thou shalt not hoard; only the squirrel hoardeth and this he doeth because he is a squirrel.
5. Thou shalt not get ants in thy pants to put on a uniform only because thou art vain and has no courage to hoe thy row in the place where thou art most needed.
6. Thou shalt walk; even thus shalt thou aid to save gas and rubber; thus shalt thou redeem the price of thy girdle and thy doctor's bill and thy very hide.
7. Thou shalt not strike, neither shalt thou walk out; neither shalt thou lock out; neither shalt thou sit down on the job; in order that thy days may be long in the land which the Lord thy God hath given thee.
8. Thou shalt not in thy confidence measure the seas, for verily they who have thought to hide behind the seas are full of prune juice.
9. Thou shalt not fret because of evil-doers for thou has not done so well thyself.
10. Thou shalt not lose faith; thou hast lost nothing beyond recovery if thy faith be not lost.

[1] President of the National Aeronautics Association. Peprinted by permission from Aeronautics.

Age Description. I am in possession of a Chattel Mortgage written by a Justice of the Peace of Catawba County, North Carolina. The description of the property embraced in this mortgage reads as follows: "One Jersey cow with horns about six years old."

Contributor: Lloyd M. Abernethy.
Granite Falls, N. C.

ELP?

shut.

ashington
s and th
family'
dence and
of thes
gton, fo

n becaus
ther shal
vice of a
is colleg
ckground
be held
d men
an abomi

e squirre
ecause h

thy pant
ause thou
o hoe th
art mo

halt thou
thus shal
girdle and
hide.

her shal
thou loc
vn on th
y be lon
thy Go

nce mea
who have
as are ful

evil-doer
ll thyself
a hast lo
y faith h

nautics A
ion fro

session o
Justice o
rth Caro
perty em
s follows
six year

ernethy.
s, N. C.